IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5716 OF 2003

Shri Taher Ismail Qureshi & ors.... Petitioner

Versus

Shri Tajuddin Gulab Badane & ors.... Respondent

Mr.S.B.Deshmukh for Petitioner

Mr.Vinod Savaji for Ms S.Mane for Respt nos.1 to 4

Mr.Ganesh Gole for Respt

CORAM : A.S.Oka, J

DATE: 10th December, 2004

P.C.:

1. On 8th September, 2003 this court issued notice for final disposal at admission stage. Office noting shows that all the respondents are served.

2. The challenge in this petition under Article 227 of the Constitution of India is to the order passed by the trial court dated 22nd July, 2003 by which an application for amendment of the plaint made by the petitioners is rejected. By the proposed amendment the petitioner was desirous of correcting the description of the suit property mentioned in para 1 of the plaint. The application for amendment was contested by the respondents. The learned Judge after noting that the application has been filed after evidence of the respondents/defendants has been closed held that in view of proviso to Rule 17 of Order 6 of the Code of Civil Procedure 1908 incorporated by the amending Act of 2002, the application for amendment cannot be allowed.

3. Learned counsel appearing for the petitioner submitted that the provisions of the Amending Act of 2002 are not applicable to the suit as as the same has been filed prior to coming into force of the Amendment Act. He submitted that the amendment can be

permitted to be made to the plaint at any stage of the proceedings. He submitted that the proposed amendment will not change the nature of the suit.

4. Learned counsel for the respondent submitted that the application was made at a very belated stage and after the recording of evidence is completed the petitioners were attempting to completely change the description of the suit property.

5. I have considered the rival submissions. In view of the law laid down in the judgment in 2003 (2) All M.R. 1040 (Badrinarayan Somani vs Vinodkumar Shah) The proviso to rule 17 of order 6 incorporated by the Amendment Act of 2002 cannot be applied to the present suit. It is true that the application for amendment has been filed after recording of evidence of the defendants had been completed. That itself is not sufficient to reject the application for amendment of the plaint especially when only the amendment which is sought is as regards the description of the suit property. If the amendment is allowed, the defendants can always file additional written statement and always apply for recalling the witnesses of the petitioners/plaintiffs for further cross examination and can lead further evidence. Any prejudice which may be caused to the respondents can be compensated by payment of costs.

6. Hence, I pass the following order:

(i) The impugned order is quashed and set aside. The application made by the petitioner at Exhibit 107 is allowed.

(ii) The petitioners are directed to carry out necessary amendment to the plaint within a period of two weeks from the date of production of an authenticated copy of this order before the trial court.

(iii) The original defendants will be free to file their additional written statement to the amendment. It will be open for the defendants to apply for recalling the witnesses examined by the petitioners for further cross examination in the light

of the amendment which is carried out. The defendants will be also be at liberty to lead additional evidence.

(iv) Rule made absolute in the above terms. Petitioners are directed to pay costs of Rs.1500/- to the respondents nos. 3 to 4 within a period of four weeks.

7. Parties to act on an authenticated copy of this order.

A.S.OKA, J